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Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

In re

SVP,

Debtor.

Case No. 17-10067 RLE
Chapter 11
Hon. Roger L. Efremsky

OBJECTION TO CLAIMS

Andrea A. Wirum, Chapter 11 Trustee of the estate of the above Debtor, hereby objects to claims filed against the above Debtor by Stephen A. Finn and Winery Rehabilitation, LLC.

I. INTRODUCTION

The above Debtor's case and the case of SVC were jointly administered by order dated March 13, 2017. As the earlier filed case, the SVC case has been the lead case and all proofs of claim except one tax claim have been filed under the SVC case number regardless of the debtor against which the claim was asserted. Winery Rehabilitation, LLC ("WR") filed Claim No. 11 against SVP and Claim No. 12 against SVC. Stephen A. Finn filed Claim No. 13 against SVP and Claim No. 14 against SVC. The claims were most recently amended on September 11, 2018 (Claims 11-2 and 13-3). Authentic copies of the first pages of Claims 11-2 and 13-3 are attached as **Exhibits A and B**, respectively. WR is controlled by Mr. Finn.

Joint administration of the estates was severed by order dated August 26, 2019.

1 **II. PERTINENT FACTS**

2 The debtors-in-possession filed a complaint (the “Adversary Proceeding”) in the Bankruptcy
3 Court against Mr. Finn and Angelica DeVere (a former SVC employee) on July 14, 2017, seeking
4 the following relief: (a) disallowance of their claims in both bankruptcy cases and (b) damages to
5 both entities caused by Mr. Finn’s and Ms. DeVere’s alleged misconduct in management of the two
6 debtors and other misconduct. WR was not named as a defendant.

7 Approximately one month later, Timothy W. Hoffman was appointed Chapter 11 trustee of
8 both estates and became sole representative of each estate and the real party-in-interest in the
9 Adversary Proceeding.

10 On October 6, 2017, two of five SVP general partners, Kelleen Sullivan and Ross Sullivan,
11 filed a complaint against Mr. Finn and Trust Company of America, an entity Mr. Finn controlled,
12 in the United States District Court for the Northern District of California (the “District Court
13 Action”) by which they as individuals sought damages for alleged misconduct caused by Mr. Finn
14 and Trust Company of America. WR was not named as a defendant.

15 On January 10, 2018, Mr. Hoffman completed the sale of most of the assets of both estates
16 and paid Mr. Finn’s secured claim for principal, interest, other charges, and attorney fees and WR’s
17 secured claim for principal, interest, other charges, and attorney fees. Except for the Adversary
18 Proceeding, payment on the Finn and WR payoff demands should have ended the relationship of
19 the debtors with Mr. Finn and WR.

20 In March 2018, Kelleen Sullivan and Ross Sullivan, acting on their own behalf, filed
21 objections to the existing claims of Mr. Finn and WR. Those claim objections were resolved in part
22 by recognition of the payments to Mr. Finn and WR made from escrow. However, objections to
23 other aspects of Mr. Finn’s and WR’s claims remain pending.

24 In September 2018, Mr. Finn and Ms. DeVere brought a summary judgment motion in the
25 Adversary Proceeding. The Bankruptcy Court did not rule on the motion; it transferred the
26 Adversary Proceeding to the District Court and it was assigned to the Honorable William Orrick
27 who was presiding over the District Court Action and who had been involved in another action
28 brought by Mr. Finn against Joanna Sullivan.

1 In March 2019, Mr. Hoffman, Ms. DeVere, other former employees, WR, and Mr. Finn
2 reached a compromise of the estate's claims against Mr. Finn and Ms. DeVere, and the claims of
3 Ms. DeVere and the other employees against the two estates. The compromise was approved by the
4 Bankruptcy Court by order dated May 20, 2019. Mr. Hoffman dismissed the Adversary Proceeding
5 against Mr. Finn and Ms. DeVere with prejudice. The settlement agreement provided that (a) Mr.
6 Finn's and WR's claims in the two bankruptcy cases "are [not] being liquidated or resolved" by the
7 settlement agreement and (b) the parties to the agreement "shall bear their own costs, expenses and
8 attorneys' fees incurred in connection with the Napa County Action [i.e., involving the employees],
9 Adversary Proceeding, District Court Action and the Bankruptcy Cases, and the negotiation,
10 preparation and application for Bankruptcy Court approval of this Agreement."

11 In July 2019, Mr. Finn and Trust Company of America brought a motion for judgment on
12 the pleadings in the District Court Action. On September 6, 2019, the District Court granted that
13 motion with leave for Kelleen Sullivan and Ross Sullivan to file an amended complaint. They filed
14 an amended complaint. Mr. Finn and Trust Company of America filed a second motion for
15 judgment on the pleadings, which Kelleen Sullivan and Ross Sullivan have opposed. A hearing is
16 scheduled for November 20, 2019.

17 **III. TRUSTEE'S OBJECTION**

18 The Trustee's objections are to Claim No. 11 and Claim No. 13 against SVP as amended or
19 to be amended. There is no intent on the part of the Trustee for her objection to pertain to the claims
20 filed against SVC by WR and Mr. Finn or to claims among SVP's individual partners.

21 When Claim Nos. 11 and 13 were filed, they were based on amounts due under two
22 promissory notes executed by SVP and SVC. The underlying principal amounts due with interest,
23 attorney fees, and other charges to date were paid from escrow on or about January 10, 2018, in
24 connection with the sale by the Chapter 11 trustee of the jointly administered estates of most of the
25 assets of the estates. The Trustee is aware that the payoff demands submitted by WR and Mr. Finn
26 may not have included attorney fee charges between December 1, 2017, and January 10, 2018. It is
27 the Trustee's position that those fees and charges have been waived.

28 The stated basis for WR's amended Claim No. 11-2 filed on September 11, 2018 is that: (a)

1 WR is entitled to reimbursement of attorney fees and expenses in connection with claims asserted
2 against WR arising from or relating to the underlying loan agreement under *Siegel v. Fed. Home*
3 *Loan Mortg. Corp.*, 143 F 3d. 525, 528-29 (9th Cir. 1998) and (b) WR is entitled to attorney fees
4 and expenses in connection with defense against the Adversary Proceeding brought by the debtors-
5 in-possession, the District Court action brought against WR by Kelleen Sullivan and Ross Sullivan,
6 and the claim objection filed by Ross Sullivan and Kelleen Sullivan.

7 The stated basis for Mr. Finn's amended claim 13-3 filed on September 11, 2018, is that (a)
8 Mr. Finn asserts that he is entitled to attorney fees and expenses in connection with his defense
9 against the Adversary Proceeding brought by the debtors-in-possession, the District Court action
10 brought by Ross Sullivan and Kelleen Sullivan, and the claim objection filed by Ross Sullivan and
11 Kelleen Sullivan. Mr. Finn does not mention the *Siegel* case but the Trustee assumes for purposes
12 of this objection that he will assert that the *Siegel* case is authority for his recovery of defense costs
13 from the partnership.

14 The Trustee is aware that the amended WR and Finn claims are subject to further amendment
15 to increase the amounts requested. The amounts in the amended claims on file were liquidated as
16 of August 30, 2018.

17 **A. The Settlement Agreement Extinguished Any Right of Recovery of Attorney**
18 **Fees, Costs, and Expenses from the Estate**

19 The first and most obvious ground for the Trustee's objection is the settlement agreement
20 by which Mr. Finn and WR agreed to bear their own "costs, expenses and attorneys' fees in
21 connection with the Napa County Action, the Adversary Proceeding, the District Court Action and
22 the Bankruptcy Cases, and the negotiation, preparation and application for Bankruptcy Court
23 approval of this Agreement." Unless Mr. Finn and WR can show that this provision of the
24 agreement has no meaning and that the Bankruptcy Court's approval of the settlement with this
25 provision in the agreement is of no importance, their claims should be disallowed in their entirety.

26 If Mr. Finn and WR manage to persuade the Court that it should consider the claims on the
27 merits, the Trustee has substantive objections.
28

1 **B. The Siegel Case Provides Only Limited Relief if it is Applicable**

2 The Trustee objects to the WR and Finn claims against SVP on the grounds that the *Siegel*
3 case does not apply to their claims with a limited exception for Mr. Finn only. SVP and its estate
4 did not “return to the fray” as the *Siegel* case and subsequent cases require. The limited exception
5 is fees and expenses incurred by Mr. Finn only in the Adversary Proceeding between January 10,
6 2018, and May 20, 2019. January 10, 2018, is the date on which the sale of assets closed; May 20,
7 2019, is the date on which the Bankruptcy Court approved the settlement of the Adversary
8 Proceeding.

9 Unlike the Adversary Proceeding which was commenced by the two debtors-in-possession,
10 the other litigation for which Mr. Finn and WR seek fee and expense reimbursement has been driven
11 by two of SVP’s five general partners, not by the SVP estate. Those two partners (a) filed the District
12 Court Action against Mr. Finn and Trust Company of America for damage to them personally and
13 (b) filed objections to the claims of WR and Mr. Finn. The two partners have taken other actions
14 that have required response or other action by Mr. Finn’s and WR’s counsel. The two partners had
15 and have no control over the bankruptcy estate and have taken actions on their own for their own
16 benefit. The distinction between the bankruptcy estate and the two general partners has been the
17 foundation of Mr. Finn’s argument that the claims of the two general partners are derivative claims
18 that were owned by SVP and released by Mr. Hoffman. Mr. Finn and WR cannot argue that (a) the
19 two general partners do not have standing to assert derivative claims that were owned by the estate
20 and were settled by Mr. Hoffman, and (b) if the two general partners do assert those claims, the
21 estate is liable for the fees and expenses Mr. Finn and WR incur in responding to them.

22 Mr. Finn and WR will have to live with the positions they have taken in the District Court
23 and in this Court. At most, *Siegel* can apply only to reasonable fees and expenses Mr. Finn incurred
24 in defense of the Adversary Proceeding between January 10, 2018 (the date on which the underlying
25 debt to Mr. Finn and WR was paid) and May 20, 2019, the date on which the settlement agreement
26 with Mr. Hoffman was approved. *Siegel* has no applicability to any component of WR’s claim or
27 any of Mr. Finn’s other claims.
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Fill in this information to identify the case:

Debtor 1 Sullivan Vineyards Partnership

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: Northern District of California

Case number 17-10067 (Joint Adm. with 17-10065)

Official Form 410**Proof of Claim**

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Winery Rehabilitation, LLC</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. From whom? <u>Silicon Valley Bank, a California banking corporation</u>	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Pillsbury Winthrop Shaw Pittman LLP</u> Name <u>Four Embarcadero Center, 22nd Floor</u> Number Street <u>San Francisco</u> <u>CA</u> <u>94111</u> City State ZIP Code Contact phone <u>(415) 983-1000</u> Contact email <u>philip.warden@pillsburylaw.com</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different) Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email _____
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>11-1</u>	Filed on <u>04/10/2017</u> MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>See Attachment 1</u> . Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>See Attachment 1</u>
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input checked="" type="checkbox"/> Other. Describe: <u>See Attachment 1</u> Basis for perfection: <u>See Attachment 1</u> Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: <u>\$ See Attachment 1</u> Amount of the claim that is secured: <u>\$ See Attachment 1</u> Amount of the claim that is unsecured: <u>\$ See Attachment 1</u> (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

EXHIBIT A

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

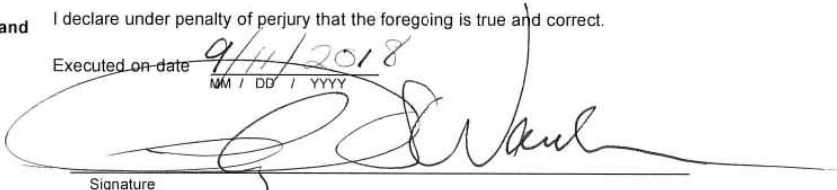
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 9/11/2018
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name Philip S. Warden
First name Middle name Last name

Title Attorney

Company Pillsbury Winthrop Shaw Pittman LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address Four Embarcadero Center, 22nd Floor
Number Street

San Francisco CA 94111
City State ZIP Code

Contact phone (415) 983-1000 Email philip.warden@pillsburylaw.com

Fill in this information to identify the case:

Debtor 1 Sullivan Vineyards Partnership

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: Northern District of California

Case number 17-10067 (Joint Adm. with 17-10065)

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Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Stephen A. Finn</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Pillsbury Winthrop Shaw Pittman LLP</u> Name <u>Four Embarcadero Center, 22nd Floor</u> Number Street <u>San Francisco</u> <u>CA</u> <u>94111</u> City State ZIP Code Contact phone <u>(415) 983-1000</u> Contact email <u>philip.warden@pillsburylaw.com</u>	Where should payments to the creditor be sent? (if different) Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>13-2</u> Filed on <u>03/06/2018</u> MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	<u>\$ See Attachment 1</u> Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>See Attachment 1</u>
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input checked="" type="checkbox"/> Other. Describe: <u>See Attachment 1</u> Basis for perfection: <u>See Attachment 1</u> Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: <u>\$ See Attachment 1</u> Amount of the claim that is secured: <u>\$ See Attachment 1</u> Amount of the claim that is unsecured: <u>\$ See Attachment 1</u> (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
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11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

EXHIBIT B

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

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A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 9 11 2018
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name Philip S. Warden
First name Middle name Last name

Title Attorney

Company Pillsbury Winthrop Shaw Pittman LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address Four Embarcadero Center, 22nd Floor
Number Street

San Francisco CA 94111
City State ZIP Code

Contact phone (415) 983-1000 Email philip.warden@pillsburylaw.com